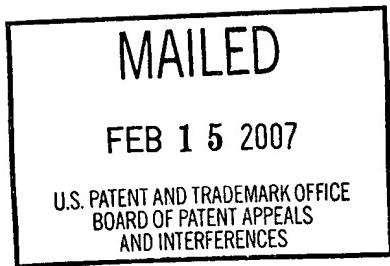


The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES



*Ex parte* ROBERT A. ROTH

Appeal No. 2006-1432  
Application No. 09/992,079  
Technology Center 3700

Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and ROBERT E. NAPPI, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

Robert A. Roth (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 11-15 and 17-20. Claims 1-10 and 16 have been canceled. We have jurisdiction over this appeal under 35 U.S.C. § 6.

We AFFIRM.

## THE INVENTION

Appellant's invention relates to a vehicle fuel pump and, more particularly, to a check valve for a vehicle fuel pump (specification, p. 1). Claim 11 is illustrative of the invention and reads as follows.

11. A fuel pump comprising:
  - an outlet member having a first passageway therethrough;
  - a valve housing disposed in said first passageway of said outlet member;
  - a valve seat formed on an interior surface of said valve housing and having a generally frusta-conical cross-sectional shape;
  - a valve member disposed in said valve housing and having an end adjacent said valve seat with an annular groove having a generally circular cross-sectional shape extending radially into said end and including a seal disposed in said groove, said valve member having a closed position in which said seal engages said valve seat to prevent fuel from flowing through said outlet member and an open position to allow fuel to flow through said outlet member;
  - a spring disposed about said valve member and located axially between said valve seat and one end of said valve housing to urge said valve member toward said valve seat; and
  - said valve member having a single outlet port disposed below said groove and located axially between said valve seat and the one end of said valve housing when said valve member is in said closed position to prevent fuel flow and to allow fuel flow when said valve member is in said open position.

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## THE EVIDENCE

The Examiner relies upon the following as evidence of unpatentability:

Hutchings	US 2,206,356	Jul. 02, 1940
Feinberg	US 3,234,959	Feb. 15, 1966
Gakenholz	US 3,936,243	Feb. 03, 1976
Gimby	US 4,938,254	Jul. 03, 1990

## THE REJECTION

The appellant seeks review of the examiner's rejection of claims 11-15 and 17-20 under 35 U.S.C. § 103(a) as being unpatentable over Hutchings in view of Gimby, Feinberg and Gakenholz.

The Examiner provides reasons in support of the rejection in the Examiner's Answer (mailed October 18, 2005). Appellant presents opposing views in Appellant's Brief (filed July 25, 2005).

## FACTS

For purposes of this appeal, Appellant has grouped dependent claims 12-15, 17 and 18 with independent claim 11 and dependent claim 20 with independent claim 19 (Br. 7 and 15).<sup>1</sup> Therefore, in accordance with 37 CFR § 41.37(c)(1)(vii), we have selected claims 11 and 19 as the representative claims to decide this

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<sup>1</sup> Statements (such as those found at Br. 14, 20) which merely point out what a claim recites will not be considered an argument for separate patentability of the claim. 37 CFR § 41.37(c)(1)(vii).

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appeal, with claims 12-15, 17 and 18 standing or falling with claim 11 and claim 20 standing or falling with claim 19.

The Examiner's findings with respect to Hutchings are set forth on pages 3 and 4 of the Answer. The Examiner (Answer 4) finds that

Hutchings discloses all the claimed features with the exception of having utility in combination with a "fuel pump" thus controlling "fuel flow" from the fuel pump to the engine, a valve seat "having a generally frusta-conical cross-sectional shape", a "circular" cross sectional groove with a complementary circular seal element as well as "a single outlet port" in the valve member.

Relying on the additional teachings of Gimby, Feinberg and Gakenholz, the Examiner explains why it would have been obvious to one of ordinary skill in the art at the time of Appellant's invention to modify Hutchings to satisfy each of the limitations of independent claims 11 and 19 perceived to be lacking in Hutchings (Answer 4-5). Each of the modifications proposed by the Examiner appears reasonable on its face.

Appellant does not specifically dispute that any of the modifications proposed by the examiner would have been suggested by the applied references. Further, Appellant does not dispute with any specificity that, if modified as proposed by the Examiner, Hutchings would meet all of the limitations of claims 11 and 19. Rather, Appellant points out that none of the references applied by the Examiner satisfies all of the limitations of claims 11 and 19 and thus concludes (Br. 10-11) that

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there is absolutely no teaching of a level of skill in the fuel pump art of a fuel pump having a valve member with a single outlet port disposed below a groove thereof and located axially between a valve seat and one end of a valve housing when the valve member is in a closed position to prevent fuel flow and to allow fuel flow when the valve member is in an open position.... As such, there is no suggestion or motivation in the art for combining Hutchings '356, Gimby '254, Feinberg '959, and Gakenholz '243 together.

Appellant goes on to allege that the Examiner is “picking and choosing elements from the structurally dissimilar devices disclosed in” Hutchings, Gimby, Feinberg and Gakenholz “and combining these elements by restructuring them, using hindsight and the Applicant’s own disclosure, to conclude that the claimed invention is obvious” (Br. 11).

#### THE ISSUE

The issue in this appeal is whether Appellant has demonstrated that the examiner erred in determining the applied references sufficient to establish that it would have been obvious to modify Hutchings as proposed by the examiner to arrive at the claimed invention. For the reasons that follow, we conclude that Appellant has not done so.

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## PRINCIPLES OF LAW

Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

## ANALYSIS

Appellant denies attacking the references individually (Br. 12) but, in fact, that is exactly what Appellant is doing. Appellant correctly points out that none of the references applied by the Examiner itself discloses each and every limitation of independent claim 11 or 19. The applied references do, however, clearly establish that, at the time of Appellant's invention, check valves were known for use in fuel pumps and each and every feature recited in Appellant's independent claims was a known expedient of check valves. Further, the Examiner has proffered reasons why the skilled artisan would have been motivated to modify Hutchings in the manner proposed to arrive at the claimed invention. Appellant has not challenged the Examiner's rationale that the proposed modifications would have been obvious.

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#### CONCLUSION OF LAW

On the record before us, Appellant has not demonstrated that the Examiner has failed to establish a legally sufficient basis for combining the teachings of Hutchings, Gimby, Feinberg and Gakenholz to arrive at the claimed subject matter.

#### SUMMARY

The decision of the Examiner to reject claims 11-15 and 17-20 as being unpatentable over Hutchings in view of Gimby, Feinberg and Gakenholz is AFFIRMED.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a). See 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

MURRIEL E. CRAWFORD )  
Administrative Patent Judge )  
JENNIFER D. BAHR ) BOARD OF PATENT  
Administrative Patent Judge ) APPEALS  
ROBERT E. NAPPI ) AND  
Administrative Patent Judge ) INTERFERENCES

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